

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs May 14, 2007 Session

ALLEN HUGHES v. TENNESSEE DEPARTMENT OF CORRECTION

Appeal from the Chancery Court for Davidson County
No. 04-2421-I Claudia Bonnyman, Chancellor

No. M2005-01254-COA-R3-CV - Filed on May 30, 2007

Inmate filed petition for declaratory judgment under the Uniform Administrative Procedures Act (UAPA) challenging the legality of the Tennessee Department of Correction's policy for conducting urinalysis testing of inmates. The chancery court dismissed Inmate's petition determining that the challenged policy was not subject to declaratory action under the UAPA. The judgment of the chancery court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM B. CAIN, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Allen W. Hughes, *pro se*.

Robert Cooper, Attorney General and Reporter; Michael E. Moore, Solicitor General; Jennifer L. Brenner, Assistant Attorney General, for the appellee, Tennessee Department of Correction.

OPINION

On May 24, 2004, Mr. Allen Hughes, an inmate in the custody of the Tennessee Department of Correction (TDOC) and incarcerated at Riverbend Maximum Security Institute in Nashville, Tennessee, was ordered to provide a urine sample for drug testing. A correctional officer and another inmate allegedly smelled marijuana smoke in the vicinity of Mr. Hughes' cell, providing the TDOC with reasonable cause to order the test. At that time, Mr. Hughes signed a chain of custody form on the urine specimen. Mr. Hughes tested positive for drugs based on the urine test and was charged with a positive drug screen. Four days later, on May 28, 2004, Mr. Hughes was randomly selected to submit to a second drug test, also by way of urinalysis.

On August 17, 2004, Mr. Hughes filed a petition for declaratory judgment under the Uniform Administrative Procedures Act (UAPA) against the Tennessee Board of Probation and Parole (TBOPP), challenging the legality of TDOC Policy Index 506.21, Inmate Drug/Alcohol Testing and

Sanctions, pursuant to Tenn. Code Ann. § 4-5-225. On August 27, 2004, the chancery court determined that Mr. Hughes had outstanding court costs and dismissed his petition pursuant to Tenn. Code Ann. § 41-21-812. On September 8, 2004, Mr. Hughes filed a motion to alter or amend the judgment, seeking to reinstate his case. The court granted the motion on September 22, 2004, after Mr. Hughes paid his outstanding court costs. On December 7, 2004, Respondent filed a motion to dismiss on behalf of the TBOPP alleging that the TDOC was the proper party to the action.

On January 10, 2005, the court dismissed Mr. Hughes' case, determining that the challenged policies of the TDOC were not subject to declaratory action under Tenn. Code Ann. § 4-5-225. In response to the order dismissing his case, Mr. Hughes filed a motion for trial on January 31, 2005. On March 23, 2005, the court ordered that the case be placed on the active docket and issued summons to the TDOC, essentially beginning the case anew. On April 15, 2005, the TDOC filed a motion to dismiss, asserting that Mr. Hughes had failed to allege a cause of action for review by way of a declaratory judgment under Tenn. Code Ann. § 4-5-225. The court granted the TDOC's motion to dismiss on April 29, 2005. Mr. Hughes appeals arguing that the chancery court erred in (1) dismissing his petition for declaratory judgment by determining that the challenged policies of the TDOC were not subject to declaratory action; and (2) determining that TDOC did not violate his Eighth Amendment rights by subjecting him to a second random drug screen.

I. UAPA CLAIM

Mr. Hughes first contends that the trial court erred in dismissing his petition for declaratory judgment under the UAPA. The UAPA allows the court to render a declaratory judgment on the "legal validity or applicability of a statute, rule or order of an agency" where the plaintiff has first sought and been denied a declaratory order from the agency itself.¹ Tenn.Code Ann. § 4-5-225; *Fuller v. Campbell*, 109 S.W.3d 737, 739 (Tenn.Ct.App.2003). The UAPA defines a "rule" as an "agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency." Tenn.Code Ann. § 4-5-102(10). However,

¹ Tenn. Code Ann. § 4-5-225 provided in its entirety states:

(a) The legal validity or applicability of a statute, rule or order of an agency to specified circumstances may be determined in a suit for a declaratory judgment in the chancery court of Davidson County, unless otherwise specifically provided by statute, if the court finds that the statute, rule or order, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the complainant. The agency shall be made a party to the suit.

(b) A declaratory judgment shall not be rendered concerning the validity or applicability of a statute, rule or order unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order.

(c) In passing on the legal validity of a rule or order, the court shall declare the rule or order invalid only if it finds that it violates constitutional provisions, exceeds the statutory authority of the agency, was adopted without compliance with the rulemaking procedures provided for in this chapter or otherwise violates state or federal law.

the definition expressly excludes “[s]tatements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public.” Tenn.Code Ann. § 4-5-102(10)(A). Thus, “a policy is not a rule under the UAPA if the policy concerns internal management of state government *and* if the policy does not affect the private rights, privileges, or procedures available to the public.” *Mandela v. Campbell*, 978 S.W.2d 531, 534 (Tenn.1998).

Mr. Hughes seeks a judicial determination of the legal validity of TDOC Policy 506.21. The stated purpose of TDOC Policy 506.21 is to uphold the safety and security of the correctional environment by specifying the conditions and procedures for conducting urinalysis testing of inmates. Clearly, this policy does not affect the private rights, privileges or procedures available to the public since the policy is only applicable to inmates of a correctional detention facility. *See Fuller*, 109 S.W.3d at 739. Moreover, based on Tenn. Code Ann. § 4-5-102(10) and the Tennessee Supreme Court decision in *Mandela*, we believe that the conditions and procedures for conducting urinalysis testing of inmates are internal operating procedures rather than “rules” and thus do not fall within the ambit of the UAPA.

Mr. Hughes however argues that TDOC Policy 506.21 must be within the ambit of the UAPA because Tenn. Code Ann. § 41-1-119(b)² expressly provides the TDOC with “the authority to promulgate necessary rules and regulations to implement the provisions of this section pursuant to the Uniform Administrative Procedures Act.” Contrary to Mr. Hughes’ assertions, the language of Tenn. Code Ann. § 41-1-119(b) is not mandatory and thus the TDOC’s urinalysis screening policies need not be promulgated as rules under the UAPA. Furthermore, Tennessee courts have consistently held that the policies and procedures of the TDOC are not subject to the requirements of the UAPA. *Mandela*, 978 S.W.2d at 531 (TDOC’s uniform disciplinary procedures are not rules within the ambit of the UAPA); *Jaami v. Conley*, 958 S.W.2d 123, 127 (Tenn.Ct.App.1997) (regulations for the classification of prisoners do not fall within the ambit of the UAPA); *Ogburn v. Tenn. Dept. of Correction*, 983 S.W.2d 677, 678-79 (Tenn.Ct.App.1998) (TDOC policies affecting the custody and control of inmates need not be promulgated as rules under the UAPA). We therefore find that the

² Tenn. Code Ann. § 41-1-119 states in its entirety:

(a) A urinalysis drug screening program shall be established within the department of correction. Every thirty (30) days, a urine sample shall be taken from each of twenty-five (25) prison inmates selected at random who are confined in each state correctional institution, and a urinalysis shall be performed to determine the presence of drugs. A positive result shall be investigated by the department to determine whether the result emanated from the prison inmate's use of legally prescribed medicine or whether it resulted from the use of illegal drugs.

(b) The commissioner has the authority to promulgate necessary rules and regulations to implement the provisions of this section pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. These rules shall provide detailed guidelines and standards for the manner in which the urine samples are taken, and the manner in which the investigations required by this section are conducted.

chancery court properly dismissed Mr. Hughes' petition for declaratory judgment under Tenn. Code Ann. § 4-5-255.

II. EIGHTH AMENDMENT CLAIM

Mr. Hughes also argues that the second random drug test required of him by the TDOC was conducted solely for the purpose of harassment in violation of the Eighth Amendment prohibition against cruel and unusual punishment. The Eighth Amendment, applied to the states through the Due Process Clause of the Fourteenth Amendment, prohibits the infliction of "cruel and unusual punishments" on those convicted of crimes. *Wilson v. Seiter*, 501 U.S. 294, 296-97, 111 S.Ct. 2321, 115 L.Ed.2d 271 (U.S.1991). In order to establish a claim under the Eighth Amendment, a plaintiff must show that (1) the alleged deprivation was "sufficiently serious" based on an objective standard such that the prison official's act resulted in the denial of the minimal civilized measure of life's necessities; and (2) the prison official acted with the requisite intent or a "sufficiently culpable state of mind." *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (U.S.1994). Mr. Hughes has failed to show how subjecting him to a random urinalysis was a denial of the minimal civilized measure of life's necessities or that the TDOC acted with a sufficiently culpable state of mind in requiring him to submit to a random urinalysis. We therefore find no merit to this assignment of error.

The judgment of the chancery court is affirmed and costs of appeal are assessed against Mr. Hughes.

WILLIAM B. CAIN, JUDGE